



OFFICE of the ATTORNEY GENERAL  
GREG ABBOTT

February 26, 2003

Ms. Carmen B. Hegeman  
Dunbar, Armendariz, Crowley & Hegeman, L.L.P.  
1700 North Stanton  
El Paso, Texas 79902

OR2003-1214

Dear Ms. Hegeman:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 177028.

The Housing Authority of the City of El Paso (the "authority"), which you represent, received a request for two proposals related to RFP HR 03-R-0003. You state, and provide documentation showing, that you notified the third parties whose proprietary interests may be implicated of the request for information and of their right to submit arguments to this office as to why the requested information should not be released.<sup>1</sup> See Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); see also Open Records Decision No. 542 (1990) (determining that statutory predecessor to section 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). You raise no exception to disclosure on behalf of the authority and make no arguments regarding the proprietary nature of the third parties' information.

We first note that the requested information relating to CEA is the subject of Open Records Letter No. 2003-0825 (2003). The authority does not inform us, and we are not otherwise aware, of any change in the law, facts, or circumstances on which Open Records Letter No. 2003-0825 (2003) is based. Therefore, the authority may continue to rely on Open Records

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<sup>1</sup>The third parties that were sent notice under section 552.305 are the following: Center for Employee Assistance ("CEA") and Integrity Employee Assistance ("Integrity").

Letter No. 2003-0825 (2003) with regard to the information that is encompassed by that decision. *See* Gov't Code § 552.301(a); Open Records Decision No. 673 (2001) (delineating circumstances under which attorney general decision constitutes previous determination for purposes of section 552.301). As the prior ruling is dispositive with regard to the requested information that relates to CEA, we need not address the arguments that we received from CEA.

Section 552.305(d) allows a third party ten business days after the date of its receipt of the governmental body's notice to submit its reasons, if any, as to why information relating to that party should not be released. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this ruling, we have not received any arguments from Integrity. Because this company did not submit arguments in response to the section 552.305 notice, we have no basis to conclude that information is excepted from disclosure under section 552.110. *See* Open Records Decision Nos. 639 at 4 (1996) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure), 552 at 5 (1990) (party must establish *prima facie* case that information is trade secret), 542 at 3 (1990). Therefore, responsive information concerning Integrity may not be withheld from disclosure under section 552.110.

We next observe that the submitted information concerning Integrity contains e-mail addresses obtained from the public. Section 552.137 of the Government Code provides:

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code § 552.137. You do not inform us that a member of the public has affirmatively consented to the release of any e-mail address contained in the submitted materials. We have marked the types of e-mail addresses that must be withheld under section 552.137. We note that section 552.137 does not apply to the general e-mail address of a business or to a government employee's work e-mail address.

Finally, we note that some of the materials pertaining to Integrity may be protected by copyright. A custodian of public records must comply with the copyright law and is not required to furnish copies of records that are copyrighted. Attorney General Opinion JM-672 (1987). A governmental body must allow inspection of copyrighted materials unless an exception applies to the information. *Id.* If a member of the public wishes to make copies of copyrighted materials, the person must do so unassisted by the governmental body. In making copies, the member of the public assumes the duty of compliance with the copyright law and the risk of a copyright infringement suit. *See* Open Records Decision No. 550 (1990).

To summarize: (1) the authority may continue to rely on Open Records Letter No. 2003-0825 (2003) with regard to the information that is encompassed by that decision; (2) we have marked the types of e-mail addresses that must be withheld under section 552.137; and (3) the remaining submitted information must be released to the requestor in accordance with copyright law.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be

provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles  
Assistant Attorney General  
Open Records Division

CN/jh

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Enc. Submitted documents

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